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Atty. Docket: 1315-22

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Daniel James Plant

EXAMINER: Cheryl Ann Juska

SERIAL NO.: 10/797,756

GROUP: Art Unit: 1771

FILED: March 10, 2004

DATED: September 10, 2008

TITLE: **FLEXIBLE ENERGY ABSORBING
MATERIAL AND METHODS OF
MANUFACTURE THEREOF**

Mail Stop PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**FEE TRANSMITTAL FOR PETITION TO REVIVE
AN ABANDONED APPLICATION UNDER 37 C.F.R. § 1.137(b)**


Sir:

The Commissioner is hereby authorized to charge the Petition fee under 37 C.F.R. 1.137(b) in the amount of \$770.00 as required per 37 C.F.R. 1.17(m) to Deposit Account No.: 50-2140, in the name of Carter, DeLuca, Farrell & Schmidt, LLP.

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postpaid in an envelope, addressed to the: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Dated: September 10, 2008

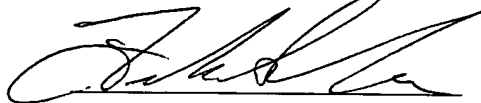

Nicole Rispone

Appl. No. 10/797,756

Fee Transmittal dated September 10, 2008

Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No.: 50-2140.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'F. Sardone', written over a horizontal line.

Francesco Sardone

Reg. No.: 47,918

Attorney for Applicants

Carter, DeLuca, Farrell & Schmidt, LLP

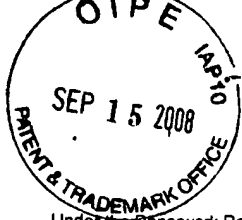
445 Broad Hollow Road – Suite 225

Melville, New York 11747

Tel.: (631) 501-5700

Fax: (631) 501-3526

FS/nr



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
1315-22

First named inventor: Daniel James Plant

Application No.: 10/797,756

Art Unit: 1771

Filed: March 10, 2004

Examiner: Cheryl Ann Juska

Title: Flexible Energy Absorbing Material And Methods of Manufacture
Thereof

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee \$ 770.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in
the form of an RCE and Preliminary Amendment (identify type of reply):

- ☐ has been filed previously on _____.
- ☒ is enclosed herewith.

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B. The issue fee and publication fee (if applicable) of \$ 01 FC:2453 770.00 DA

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

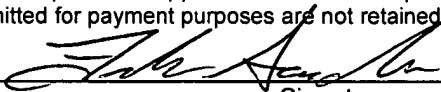
☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.



Signature

September 10, 2008

Date

Francesco Sardone

47,918

Typed or printed name

Registration Number, if applicable

445 Broad Hollow Road - Suite 225

631-501-5700

Address

Telephone Number

Melville, New York 11747

Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☒ Other: Re-newed Petition Pursuant to 37 CFR 1.78(a)(3) and 1.55(c)

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted on the date below with the United States Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450, via electronic submission.

Date: September 10, 2008



Signature

Typed or printed name of person signing certificate

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



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EXAMINER: Cheryl Ann Juska

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MATERIAL AND METHODS OF
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Commissioner for Patents
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**PETITION TO REVIVE AN ABANDONED APPLICATION
UNDER 37 C.F.R. § 1.137(b)**

Sir:

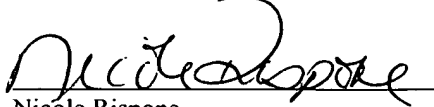
Applicants herewith submit a Petition for Revival of an Application Abandoned Unavoidably under 37 C.F.R. § 1.137(b) and the fee required under 37 C.F.R. § 1.17(m). The entire delay between the filing of this paper and the due date of the issue fee in the above-identified application was unintentional and without any deceptive intent on the part of the Applicants.

Also submitted herewith is the appropriate reply required to the outstanding Office action or notice, in the form of a Request for Continued Examination, and Preliminary Amendment and an Information Disclosure Statement.

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postpaid in an envelope, addressed to the: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Dated: September 10, 2008


Nicole Rispone

Therefore, the Applicants respectfully request prompt and favorable action on its attached petition for reviving the above-identified application.

FACTS SUPPORTING PETITION

A Final Office Action was mailed in the Above-identified application on **April 19, 2007**.

A response to the Final Office Action, in the form of an Amendment, was submitted on **June 19, 2007** (received by the U.S. Patent Office on **June 21, 2007**).

Simultaneously with the submission of the **June 19, 2007** response, a Petition Pursuant to 37 CFR 1.78(a)(3) and a Petition Pursuant to 35 CFR 1.55(c) was also submitted.

A Decision on Petition was issued on **June 19, 2008**, dismissing the petition under 37 CFR 1.78(a)(3) and as a result thereof dismissing the petition under 35 CFR 1.55(c).

On **July 10, 2008**, based on the dismissal of the Petition Pursuant to 37 CFR 1.78(a)(3) and the dismissal of the Petition Pursuant to 35 CFR 1.55(c), the Examiner issued an Advisory Action indicating that the response filed on **June 21, 2007** failed to place the application in condition for allowance. In the Advisory Action, the Examiner indicated that said response would not be entered because said response raised new issues that would require further consideration and/or search.

In addition, in the Advisory Action, the Examiner stated that the amendments made by Applicant to the specification were improper in view of the Decision on Petition issued on **June 19, 2008**.

On July 14, 2008 the Examiner issued a Notice of Abandonment for failure to timely file a proper reply to the Office letter mailed on April 19, 2007.

In the Notice of Abandonment, the Examiner states that the a proposed reply was received on June 21, 2007, but that said reply does not constitute a proper reply under 37 CFR 1.113(a) to the final rejection.

Applicants' undersigned attorney avers that Applicant had no intention of abandoning the above-identified matter.

Applicants' undersigned attorney avers that Applicant had no recourse other than to wait for the Decision on Petition before to prosecution before the Examiner could continue.

Since the Decision on Petition issued more than six (6) months after the statutory deadline for reply to the Final Office Action and since the response to the Final Office Action was contingent upon the outcome of the Decision on Petition, upon the dismissal of the Petition, the reply to the Final Office Action automatically failed to place the application in condition for allowance and automatically became abandoned.

As stated above, Applicants' undersigned attorney avers that Applicant had no intention of abandoning the above-identified matter.

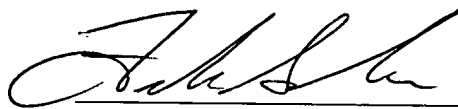
Thus, in view of the foregoing, Applicants' undersigned Attorney respectfully petitions the Commissioner to withdraw the Notice of Abandonment for the above-identified matter, as being unintentionally abandoned.

Enclosed herewith, please find the following:

- 1) A Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b);
- 2) A petition fee in the amount of \$770.00 as set forth in 37 CFR 1.17(m);
- 3) A Request for Continued Examination, Preliminary Amendment and Information Disclosure Statement;
- 4) Since the above-identified application was filed on or after June 8, 1995, no terminal disclaimer or associated fee is required; and
- 5) A statement that the entire delay in the filing of the required reply was unintentional.

An early and favorable response is earnestly solicited.

Respectfully submitted,



Francesco Sardone
Reg. No.: 47,918
Attorney for Applicants

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road – Suite 225
Melville, New York 11747
Tel.: (631) 501-5700
Fax: (631) 501-3526
FS/nr